



DEPARTMENT OF COMMERCE

International Trade Administration

[A-455-806]

Certain Preserved Mushrooms from Poland: Final Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain preserved mushrooms (preserved mushrooms) from Poland are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2021, through December 31, 2021.

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Eliza DeLong, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5166.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2022, Commerce published in the *Federal Register* its *Preliminary Determination*, in which it also postponed the final determination until March 20, 2023.¹ Commerce invited interested parties to comment on the *Preliminary Determination*.²

For a complete description of the events that followed the *Preliminary Determination*,

¹ See *Certain Preserved Mushrooms from Poland: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 87 FR 66273 (November 3, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

² *Id.*

see the Issues and Decision Memorandum.³ The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Investigation

The products covered by this investigation are preserved mushrooms from Poland. For a full description of the scope of this investigation, see Appendix I.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), in December 2022, we conducted verification of the sales information submitted by Okechamp S.A. (Okechamp) for use in our final determination. We used standard verification procedures, including an examination of relevant sales and accounting records, and original source documents provided by Okechamp.⁴

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues raised in the Issues and Decision Memorandum is attached to this notice as Appendix II.

Changes Since the Preliminary Determination

We have made certain changes to the margin calculations for Okechamp, Bonduelle Polska-UL.Michala (Bonduelle Michala) and Boduelle Polska SA (Bonduelle Polska) since the

³ See Memorandum, "Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Preserved Mushrooms from Poland," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁴ See Memorandum, "Verification of the Questionnaire Response of Okechamp S.A. in the Less-Than-Fair-Value Investigation of Certain Preserved Mushrooms from Poland," dated January 27, 2023.

Preliminary Determination. See the Issues and Decision Memorandum for a discussion of these changes.

Use of Adverse Facts Available

As discussed in the *Preliminary Determination*, Commerce assigned to the mandatory respondents in this investigation, Bonduelle Michala and Bonduelle Polska, estimated weighted-average dumping margins on the basis of adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Act.⁵ There is no new information on the record that would cause us to revisit our decision in the *Preliminary Determination*. Accordingly, for this final determination, we continue to find that the application of AFA pursuant to sections 776(a) and (b) of the Act is warranted with respect to Bonduelle Michala and Bonduelle Polska.

Pursuant to section 776(b) of the Act, we examined the dumping margins alleged in the petition, the weighted-average dumping margin calculated in this final determination, and other information of the record of this investigation to determine an appropriate estimated weighted-average dumping margin for Bonduelle Michala and Bonduelle Polska based on AFA. We are assigning the highest transaction-specific dumping margin calculated for Okechamp as the estimated weighted-average dumping margin to Bonduelle Michala and Bonduelle Polska based on AFA. Because we are relying on information obtained in the course of this investigation, we do not need to corroborate this margin pursuant section 776(c) of the Act. For further discussion, see the Issues and Decision Memorandum at “Use of Adverse Facts Available.”

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis*, or determined entirely under section 776 of the Act.

⁵ See *Preliminary Determination*, 87 FR at 66273.

In this case, Commerce calculated an individual estimated weighted-average dumping margin for Okechamp that is not zero, *de minimis*, or determined entirely under section 776 of the Act. Consequently, the rate calculated for Okechamp is also assigned as the rate for all other producers and exporters.

Final Determination

Commerce determines that the following estimated weighted-average dumping margins exist for the POI:

Producer/Exporter	Estimated Weighted-Average Dumping Margin (percent)
Okechamp S.A.	34.32
Bonduelle Polska-UL.Michala	57.22
Bonduelle Polska SA	57.22
All Others	34.32

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this final determination within five days of the date of publication of this notice or, if there is no public announcement, within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of preserved mushrooms from Poland, as described in Appendix I to this notice, which were entered, or withdrawn from warehouse for consumption on or after November 3, 2022, the date of publication of *Preliminary Determination* of this investigation in the *Federal Register*.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), where appropriate, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated

weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of preserved mushrooms from Poland no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted will be refunded and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the "Continuation of Suspension of Liquidation" section.

Administrative Protective Order

This notice will serve as a final reminder to the parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is

hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: March 20, 2023.

Lisa W. Wang,
Assistant Secretary
for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this investigation are the genus *Agaricus*. “Preserved mushrooms” refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heat sterilized in containers each holding a net drained weight of not more than 12 ounces (340.2 grams), including but not limited to cans or glass jars, in a suitable liquid medium, including but not limited to water, brine, butter, or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces.

Excluded from the scope are “marinated,” “acidified,” or “pickled” mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives. To be prepared or preserved by means of vinegar or acetic acid, the merchandise must be a minimum 0.5 percent by weight acetic acid.

The merchandise subject to this investigation is classifiable under subheadings 2003.10.0127, 2003.10.0131, and 2003.10.0137 of the Harmonized Tariff Schedule of the United States (HTSUS). The subject merchandise may also be classified under HTSUS subheadings 2003.10.0143, 2003.10.0147, and 2003.10.0153. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Changes from the *Preliminary Determination*
- IV. Use of Facts Available with an Adverse Inference
- V. Discussion of the Issues
 - Comment 1: Whether Commerce Should Apply Total Adverse Facts Available (AFA) to Okechamp
 - Comment 2: Whether to Include Certain Comparison Market Indirect Selling Expenses
 - Comment 3: Whether Commerce Should Revise Certain Romanian Gross Unit Prices
 - Comment 4: Whether to Adjust Freight Expenses in the Comparison Market
 - Comment 5: Whether to Adjust Freight Revenue in the Comparison Market
 - Comment 6: Whether to Adjust Freight Revenue in the U.S. Market
 - Comment 7: Whether to Adjust General and Administrative (G&A) Expenses
 - Comment 8: Adjustments to Financial Expense Ratio
 - Comment 9: Selection of Romania as the Comparison Market
- VI. Recommendation

[FR Doc. 2023-06187 Filed: 3/24/2023 8:45 am; Publication Date: 3/27/2023]